

IN THE ROUND VALLEY JUSTICE COURT  
 COUNTY OF APACHE, STATE OF ARIZONA

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SUE HALL, CLERK  
 APACHE COUNTY SUPERIOR COURT

STATE OF ARIZONA,

Plaintiff,

vs.

JOSEPH DOUGLAS ROBERTS,

Defendant.

No. CR 2009-0259

*CR2010047*

TRANSCRIPT OF FIRST DAY OF PRELIMINARY HEARING

St. Johns, Arizona  
 Friday, February 5, 2010

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Prepared for:

APACHE COUNTY SUPERIOR COURT

1  
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3  
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14

15 ALSO PRESENT:

16 JOSEPH DOUGLAS ROBERTS, Defendant  
17 BRIAN HOUNSHELL, Investigator  
18 LANCE SPIVEY, Apache County Sheriff's Office  
19  
20  
21  
22  
23  
24  
25

Proceedings before the Honorable Sherry  
 Giesler, Justice of the Peace, Round Valley, Arizona,  
 taken on Friday, February 5, 2010, commencing at 1:38  
 p.m. thereof, in the Main Courtroom, Apache County  
 Courthouse, St. Johns, Arizona, reported by John A.  
 Dalsin, a Registered Professional Reporter and a  
 Certified Court Reporter in and for the State of  
 Arizona.

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# I N D E X

## EXHIBITS

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(None.)

## STATE'S WITNESSES

BRIAN HOUNSHELL

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## P R O C E E D I N G S

THE COURT: Good afternoon. Be seated, please.

We are going to proceed. This is a Round Valley Justice Court case. It is being held here in St. Johns. And the case number is CR 2009-0259. This is State of Arizona versus Joseph Douglas Roberts.

And for the record, the court does note the presence of defense counsel, the defendant, the prosecution and the deputy.

Is the State ready to proceed?

MR. BRANNAN: Your honor, before we proceed, I just want to make a record that a plea offer has been extended to the defendant and that as soon as the first witness is sworn, that plea agreement ends.

The plea offer that was made is for the defendant to plead guilty to one count of first-degree murder and one count of theft of a means of transportation; he is guaranteed concurrent sentences and the minimum sentences. He would be looking at twenty-five to life if he takes that sentence. He would be eligible for parole after twenty-five years. He would be forty-seven years old at that time. And while not young, forty-seven years is not entirely old either.

The likelihood, if he goes to trial and

1 is convicted of multiple offenses, that he would get  
2 concurrent sentences I think is pretty slim. I think a  
3 realistic sentence, if he is eligible for parole after  
4 trial, would be somewhere in the neighborhood of  
5 forty-two to life. That would put him about sixty-five  
6 years old when he gets released from prison. While  
7 most people would be retiring at that age, he would not  
8 have paid anything into Social Security, and he would  
9 just be beginning his life as an adult at sixty-five.

10 As soon as the first witness is sworn,  
11 that plea agreement is withdrawn and, pursuant to Rule  
12 15.8, it's not required to be re-extended. It is  
13 unlikely that ANY plea agreement will be extended once  
14 the preliminary hearing proceeds.

15 In order to receive the benefit of that  
16 agreement, he would have to waive this hearing.

17 I want to make a record to make sure that  
18 there is absolutely no doubt in anyone's mind after  
19 this hearing takes place that he was made aware of this  
20 offer and the ramifications of proceeding right now.

21 THE COURT: Mr. Martin?

22 MR. MARTIN: Yes, judge.

23 THE COURT: You understand that that has been  
24 extended to your client.

25 Do you wish to address the court?

1 MR. MARTIN: ~~I do.~~

2 Your honor, here is what I wish to say to  
3 that. Hogwash! It is hogwash! It is an affront upon  
4 this court, it is an affront upon justice.

5 Since when does the State of Arizona come  
6 into court at a preliminary hearing, at which they have  
7 the burden of proof, probable cause, for this court to  
8 make a determination on ten counts of an amended  
9 complaint, allegedly filed on November 5th -- which I  
10 would like to check the court file before we proceed --  
11 and go into his plea-bargaining theories and his life  
12 expectancy and his knowledge about Social Security.  
13 Where did that come from? Where is that authorized in  
14 the rules? Can somebody show me where in Rule 5 it  
15 says he can do that?

16 So it's hogwash, in my mind. And that's  
17 why it's hogwash.

18 Moreover, we expect that before this  
19 hearing is over -- Well, actually, let me strike that  
20 and start over.

21 At this point I would move for dismissal  
22 of the charges, and I would move for that on the  
23 grounds of prosecutorial misconduct, one piece of which  
24 we have just seen. And I intend to present additional  
25 pieces of it as we go forward.

1                   That's all for right now.

2                   MR. BRANNAN: Judge, under the case of State  
3 versus Donald, I just needed to make sure that the  
4 defendant was aware of the offer that had been made and  
5 that he is rejecting it, knowing what the ramifications  
6 of rejection are. Because otherwise, if we go to  
7 trial, he could make an argument that he should get  
8 that plea offer even after the expense of the trial.

9                   The Court of Appeals made that case,  
10 State versus Donald, that put us in a position where we  
11 are required to make a record that the defendant is  
12 aware of a plea agreement. And it's not any misconduct  
13 on my part. That is what is the law currently, as it  
14 requires that the defendant be made aware, and that we  
15 have a record that he has been made aware. That's all  
16 I'm doing.

17                  MR. MARTIN: Can we have a citation on that  
18 case?

19                  MR BRANNAN: I don't have that. I can get you a  
20 citation at the end. The case name is State versus  
21 Donald. I will get you the citation after the hearing,  
22 if the court thinks it's necessary.

23                  THE COURT: Well, at this time, this is a  
24 preliminary hearing. This is basically the first  
25 screening of the charges that have been filed against

1 the defendant, Mr. Roberts. And it is up to the State  
2 to prove to this court that there is probable cause to  
3 believe that the charges in fact occurred and probable  
4 cause to believe that Mr. Roberts was involved in that  
5 matter.

6 As to the motion to dismiss, I am going  
7 to deny that.

8 And I don't believe that the citation for  
9 State versus Donald is necessary at this time.

10 I just need to ask: Is the defense ready  
11 to proceed with the preliminary hearing?

12 MR. MARTIN: Yes.

13 THE COURT: The defendant is charged through a  
14 criminal complaint, a felony complaint, that was filed  
15 in the court. There are several charges.

16 Do you waive the reading of the  
17 complaint?

18 MR. MARTIN: May I see the complaint before I  
19 answer that question?

20 THE COURT: Yes.

21 MR. MARTIN: Your honor, is there a time stamp  
22 on this complaint?

23 THE COURT: No. There is a -- At the top of  
24 this one, it shows that on November 5th, 2009, 11:54,  
25 it was faxed to the Round Valley Justice Court from the



1 ~~Apache County~~ Attorney, on this faxed copy that is here  
2 in my file.

3 That is the original that you have in  
4 your hand.

5 Have you received a copy of that  
6 complaint?

7 MR. MARTIN: I have.

8 THE COURT: OK.

9 Do you waive the reading of the  
10 complaint?

11 MR. MARTIN: Yes.

12 THE COURT: Mr. Brannan, would you like to call  
13 your first witness, please.

14 MR. BRANNAN: I call Brian Hounshell.

15 BRIAN HOUNSHELL,  
16 called as a witness by and on behalf of the State,  
17 first swearing and affirming to the court the testimony  
18 he will offer in the matter now before the court will  
19 be the truth, the whole truth and nothing but the  
20 truth, was examined and testified as follows:

21 MR. MARTIN: Your honor, we move for sequestra-  
22 tion of witnesses.

23 MR. BRANNAN: Judge, Deputy Spivey is my case  
24 agent.

25 THE COURT: Do you have any other witnesses,

1 other than Mr. Hounshell, here?

2 MR. BRANNAN: No.

3 THE COURT: Go ahead, please.

4 DIRECT EXAMINATION

5 BY MR. BRANNAN:

6 Q. Would you state your name and occupation  
7 for the record?

8 A. My name is Brian Hounshell. I'm an  
9 investigator employed by the Apache County Attorney's  
10 Office.

11 Q. During the course of this preliminary  
12 hearing we are going to be discussing an individual  
13 named Joseph Douglas Roberts.

14 Do you know who that is?

15 A. Yes, I do.

16 Q. Is he in court today?

17 A. Yes. He's sitting next to his defense  
18 attorney, in the orange.

19 Q. And at any point, if there is any other  
20 Joseph Douglas Roberts you are referring to, would you  
21 please let us know?

22 A. Yes, I will.

23 Q. You are currently employed as an  
24 investigator for the County Attorney's Office?

25 A. Yes, I am.

1 Q. Did you have different employment in  
2 April of 2007?

3 A. Yes.

4 Q. And what did you do then?

5 A. I was elected Sheriff of Apache County.

6 Q. And during that time were you involved in  
7 an investigation into the death of a person known  
8 colloquially as "Stoney"?

9 A. Yes, I was.

10 Q. How did you become involved in that  
11 investigation?

12 A. I was contacted by one of the commanders,  
13 who advised me there had been a suspicious death at the  
14 William McCarraghe residence, aka "Stoney", outside of  
15 town.

16 And I responded out there.

17 Q. Were you involved in that investigation?

18 A. Yes, I was.

19 Q. And are you familiar with the contents of  
20 the reports and of the investigation in that case?

21 A. I've seen most of them. It's been some  
22 time, but I have reviewed them.

23 Q. OK. And if at any time you refer to  
24 statements made by other persons, if you could refrain  
25 from referring to any statements made by anybody who

1       you do-not currently know would be available to testify  
2       at trial, I would appreciate that.

3               A.       OK.

4               Q.       When you arrived at the location of the  
5       alleged homicide, where were you? Where did it take  
6       place?

7               A.       It was out east of town here, in St.  
8       Johns, at the McCarraghe residence.

9               Q.       And what did you find when you arrived  
10      there?

11              A.       I visited with some of the people that  
12      were on the scene, and they updated me of their  
13      findings.

14              Q.       Did they show you what their findings  
15      were based on?

16              A.       Eventually.

17              Q.       What did they show you that you observed  
18      when you were out there at the location, at the  
19      McCarraghe residence?

20              A.       The crime scene was relatively -- I  
21      think, a couple of days, maybe two or three days. It  
22      was quite extensive, the exterior portions of it, as  
23      far as different impressions, either vehicle or human,  
24      shoe impressions, exterior elements of the crime,  
25      interior, blood spatter, casings.

1 Q. And you observed ~~this?~~

2 A. Yes, I did.

3 Q. And did you see the body, or had the body

4 been removed by the time you arrived?

5 A. I was allowed to view it.

6 Q. And did you know the person who at that

7 time was known commonly as "William Stone"? Did you

8 know him before seeing the body?

9 A. I had seen him in town a few times.

10 Q. And did you recognize the corpse as his?

11 A. Yeah. I wasn't a hundred percent, but I

12 thought it was him. I had seen him in town a few

13 times.

14 Q. And had you been to that residence

15 before, or were you aware of that residence before?

16 A. I think it was the first time I'd ever

17 been there.

18 Q. And was it his reputed residence, where

19 he resided?

20 A. Yes.

21 Q. Were you able through your investigation

22 to determine how -- we will call him "Stoney", how

23 Stoney died?

24 A. Multiple gunshot wounds.

25 Q. And was it determined whether the

1 multiple gunshot wounds came from the same weapon, or  
2 from various weapons?

3 MR. MARTIN: Foundation. Objection.

4 THE COURT: Can you lay some foundation, please.

5 MR. BRANNAN: All right.

6 Q. BY MR. BRANNAN: In the course of the  
7 investigation, were bullets extracted from the corpse  
8 that you saw?

9 A. I saw reports, lab reports.

10 Q. Based on bullets having been extracted  
11 from that body?

12 A. Yes. FBI lab reports, as well as a  
13 pathologist from Tucson.

14 Q. And again, to the best of your knowledge,  
15 are those reports available, and would the people who  
16 prepared those reports be available to testify in the  
17 event the case goes to trial?

18 A. Yes.

19 Q. And was it determined from those reports  
20 whether there was one or multiple weapons used?

21 A. At least two.

22 Q. And were they able to determine the  
23 caliber of the weapons used?

24 A. .22 caliber.

25 Q. And have you seen an autopsy report in

1 the case?

2 A. It's been quite some time, but yes. I  
3 have.

4 Q. And is the medical examiner still  
5 available to testify in the event the case goes to  
6 trial?

7 A. To my knowledge, yes.

8 Q. Did the medical examiner determine the  
9 cause of death?

10 A. A homicide.

11 Q. And the manner of death?

12 A. Gunshot.

13 Q. In the course of the investigation that  
14 took place in 2007, did you have any persons of  
15 interest that you were looking at as possible suspects?

16 A. There were numerous people that the  
17 investigators were looking at.

18 Q. Were you able to develop, in your  
19 investigation, a definitive suspect?

20 A. Not at that time. No.

21 Q. I am going to move forward now to the  
22 fall of 2009.

23 In August of 2009 did you become involved  
24 in the investigation of a missing teenager?

25 A. Yes.

1 Q. And how did you become ~~involved~~ in that  
2 investigation?

3 A. St. Johns Police Department, Sergeant  
4 Lucas Rodriguez, visited our office here in St. Johns  
5 and asked for assistance in locating Ricky Flores, a  
6 sixteen-year-old missing juvenile.

7 Q. And through your investigation, were you  
8 ultimately able to determine who had caused the death  
9 of Mr. Flores?

10 A. Yes.

11 Q. And who was that?

12 A. William Inmon.

13 Q. And in the course of that investigation,  
14 did you develop a suspicion that Mr. Inmon had been  
15 involved in other homicides?

16 A. Yes.

17 Q. What other homicides did you develop  
18 suspicion that he had been involved in?

19 A. In Stoney's murder, McCarraghe's murder,  
20 of course; and a man by the name of Daniel Achten.

21 Q. OK. And in the course of that  
22 investigation, did you conduct a lengthy interview with  
23 William Inmon in October of this year?

24 A. In August.

25 Q. In October. At the Eagar Police



1 Department?

2 A. That would have been in September . . .  
3 It was August 26th -- August 28th was my first  
4 interview at Springerville PD. And then the proffer  
5 talk was 9-26 -- No. 9-25.

6 So, in August and September I talked to  
7 Mr. Inmon

8 Q. And did you talk to him also at the  
9 Springerville Police Department between those  
10 occasions, between when you originally began the  
11 investigation and the proffer call?

12 A. Yeah. Numerous. Numerous conversations.

13 Q. And during the course of your initial  
14 investigation, did Mr. Inmon confess to the homicide of  
15 Ricky Flores?

16 A. Yes, he did.

17 Q. Did you subsequently engage him in what  
18 we have referred to as a "proffer talk", an  
19 investigation into other homicides he may have also  
20 been involved in?

21 A. Yes.

22 Q. And did he confess to any other homicides  
23 during that interview?

24 A. Yes, he did.

25 Q. Who did he confess to killing during that

1 interview?

2 A. Stoney, William McCarraghe; and Daniel  
3 Achten.

4 Q. During the course of that interview, did  
5 you determine whether anyone -- according to Inmon,  
6 whether anyone else had assisted Inmon in any of those  
7 homicides?

8 A. Yes.

9 Q. And did he name anybody who assisted him  
10 during the homicide of Mr. McCarraghe?

11 A. Yes, he did.

12 Q. Who did he identify as having assisted  
13 him in that homicide?

14 MR. MARTIN: I am going to object, your honor.

15 I am objecting on the grounds that the  
16 rules call for a substantial beliefs basis to believe  
17 that -- Well, let me start over.

18 . . . legal grounds to believe that the  
19 declarants will be personally available for trial, not  
20 to relating words from one William Inmon.

21 And we have concerns about his avail-  
22 ability for trial on two fronts. One is: He was  
23 removed from the Apache County Jail on a stretcher not  
24 long ago; his whereabouts are unknown, his status is  
25 unknown.

1                   Secondly: His availability at trial may  
2                   be legally impaired, as to whether or not he will  
3                   actually testify.

4                   So we are going to object on those  
5                   grounds, because we don't think that has been  
6                   satisfied. I believe the State knows about his  
7                   potential unavailability, and should be required to  
8                   prove that there are reasonable grounds to believe that  
9                   he will be personally available for trial, in light of  
10                  what we understand his status to be relative to being  
11                  removed from the jail on a stretcher, as well as his  
12                  legal availability in terms of his intent to remain  
13                  silent.

14                 THE COURT: Mr. Brannan?

15                 MR. BRANNAN: Let me ask.

16                 Q.         BY MR. BRANNAN: Mr. Hounshell, to your  
17                 knowledge, is William Inmon alive?

18                 A.         Yes.

19                 Q.         Can he speak?

20                 A.         Yes.

21                 Q.         Any indication that he is likely to die  
22                 before he could be deposed, so that his testimony could  
23                 be preserved for trial if necessary?

24                 MR. MARTIN: Objection. Foundation.

25                 THE COURT: Mr. Brannan?

1 MR. BRANNAN: I am asking if he has any  
2 information to believe that he is going to die. I am  
3 not asking whether he is going to die, I am not asking  
4 for a medical conclusion. I am attempting to show that  
5 he is reasonably likely to be available.

6 Let me lay this out. Mr. Inmon has  
7 agreed to cooperate and testify against the defendant.  
8 He is about to face at least one life sentence. He is  
9 going to be in prison for at least the next twenty-five  
10 years. We don't know exactly where he is, but we can  
11 serve him with a subpoena. And if he testifies  
12 differently at trial, we can use his prior statements  
13 as both evidence against the defendant in this case and  
14 to impeach him at trial.

15 MR. MARTIN: May I voir dire the witness on this  
16 point, judge?

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION

19 BY MR. MARTIN:

20 Q. Do you know whether or not William Inmon  
21 was removed from the Apache County Jail on January 26th  
22 on a stretcher?

23 A. No. I'm not aware of that.

24 MR. MARTIN: That's all I have.  
25

1 DIRECT EXAMINATION (Resumed)

2 BY MR. BRANNAN:

3 Q. Have you spoken to him since?

4 A. The last court hearing, that he walked  
5 into the courtroom, your honor, and walked to the back.  
6 And I went back and visited with him. He didn't  
7 complain about his health to me at all.

8 Q. And that was after January 26th?

9 A. I would assume -- I can't remember the  
10 date. Whatever his last hearing was. It's been within  
11 the last couple weeks.

12 I'm sure you can check with the jail, if  
13 you like.

14 MR. BRANNAN: I would ask that I be permitted to  
15 continue, and at the end of these two witnesses I will  
16 call somebody from the jail, and we will find out what  
17 out what his current health situation is.

18 THE COURT: OK. I will allow it.

19 Go ahead, Mr. Hounshell.

20 MR. BRANNAN: Let's go back to what Mr. Inmon  
21 told you about the homicide of Mr. McCarraghe.

22 Q. BY MR. BRANNAN: What did he tell you  
23 occurred on the date that Mr. McCarraghe was killed?

24 A. He said that he had visited with a friend  
25 of his named Joe Roberts, and explained his displeasure

1 with Mr. McCarraghe, that he had inappropriately  
2 touched a few people here in town, and he was very  
3 upset about it. And he discussed it with Mr. Roberts.  
4 And he advised Mr. Roberts that he was going to kill  
5 Mr. McCarraghe. And they met and put a plan together,  
6 and they went out to Mr. McCarraghe's residence late in  
7 the evening and approached it. Both of them were  
8 armed.

9 Q. Now, when you say "they", identify who  
10 you are talking about.

11 A. Mr. Inmon and Mr. Roberts approached the  
12 McCarraghe residence under cover of darkness and  
13 located him in his residence, on his property -- Mr.  
14 McCarraghe -- and fatally shot and killed him.

15 Q. And did he describe in detail how that  
16 shooting took place?

17 A. Yes.

18 Q. What did he tell you, in detail,  
19 regarding that shooting?

20 A. He said that he had cut -- "he" being Mr.  
21 Inmon, cut the screen so he could open a window in the  
22 living quarters where Mr. McCarraghe was sleeping; that  
23 he called Mr. Roberts over to that location; proceeded  
24 to open the window. They both, Mr. Roberts and Mr.  
25 Inmon, had .22 caliber semiautomatic rifles. He kicked

1 the side of the residence, with the intentions of  
2 startling Mr. McCarraghe. Mr. Inmon yelled something  
3 to the effect of "Kill him now". They both fired  
4 approximately, combined, fifteen to sixteen rounds,  
5 striking Mr. McCarraghe.

6 Q. All right. And did Mr. Inmon say whether  
7 anyone else assisted him in any way in getting to the  
8 McCarraghe residence?

9 A. Mr. Inmon told me that Jimmy, or James,  
10 Dandridge provided the transportation to and from the  
11 McCarraghe residence.

12 Q. And were you familiar with Mr. Dandridge  
13 before this name had been given to you during this  
14 interview?

15 A. Yes.

16 Q. And how did you know Mr. Dandridge?

17 A. Shortly after the death of Mr.  
18 McCarraghe, I had the opportunity to meet Mr. Dandridge  
19 at Circle K here in St. Johns.

20 Q. And how did you come to meet him?

21 A. They were in a van -- Mr. Dandridge was  
22 outside in a van. And I had been involved in  
23 processing the scene at McCarraghe's. And the tires  
24 appeared to me to be a possible match.

25 So I called deputies, investigators, in

1 to take a look at the vehicle to see if they could  
2 identify the tire.

3 Q. So is it Mr. Dandridge's -- Did you  
4 call it a "van"?

5 A. A "van".

6 Q. And the characteristics of the van, were  
7 they consistent with what you saw at the crime scene?

8 A. Yes, they were.

9 Q. And so was Mr. Inmon's statement that Mr.  
10 Dandridge was involved in the offense corroborated by  
11 evidence that was recovered at the crime scene?

12 A. Yes. Circumstantial evidence, I would  
13 say. It wasn't physical, until Mr. Dandridge had  
14 admitted to being involved.

15 Q. And the circumstantial evidence being  
16 tire tracks?

17 A. Photographs of the tire tracks; and I  
18 believe there was some other evidentiary stuff in the  
19 van, maybe a shoe box, or . . . I can't really  
20 remember today.

21 Q. All right. And what did Inmon say  
22 Dandridge's involvement was?

23 A. Strictly transportation to and from the  
24 McCarraghe residence.

25 Q. And the description that Inmon gave you



1 of how the homicide took place, was it corroborated by  
2 any physical evidence you saw?

3 A. Yes.

4 Q. What corroborated his statement?

5 What did you see that was consistent with  
6 what Inmon told you happened?

7 MR. MARTIN: Objection. Foundation.

8 MR. BRANNAN: "What did you see"?

9 MR. MARTIN: No. It's what he concluded from  
10 what he saw. That's the part I am objecting to.

11 MR. BRANNAN: I am not asking for a conclusion,  
12 judge. I am asking if there was anything he saw that  
13 was consistent with what Mr. Inmon said.

14 The court makes conclusions. Not the  
15 witness.

16 THE COURT: The objection is overruled.

17 Answer the question.

18 THE WITNESS: Could you ask the question again,  
19 please?

20 Q. BY MR. BRANNAN: What things did you see  
21 that were consistent with what Mr. Inmon said happened?

22 MR. MARTIN: Show my continuing objection,  
23 please.

24 THE COURT: So noted.

25 A. Tire impressions, shoe impressions, --

1 Q. BY MR. BRANNAN: Tell me about the shoe  
2 impressions. What do you mean?

3 MR. MARTIN: Please let him finish answering the  
4 question.

5 THE COURT: Finish answering the question, and  
6 then --

7 THE WITNESS: I forgot the question again! I'm  
8 sorry.

9 Can you ask it again?

10 Q. BY MR. BRANNAN: Tire impressions, shoe  
11 impressions. Why don't you just tell us everything you  
12 saw, and then we can go step by step.

13 A. I saw -- After being at the scene and  
14 talking to Mr. Inmon, it was my conclusion that he was  
15 being truthful, due to the path --

16 MR. MARTIN: I am going to object to the  
17 vouching.

18 A. . . . the path that they took to --

19 THE COURT: What was your objection? I'm sorry.

20 MR. MARTIN: Vouching that Inmon is being  
21 truthful.

22 MR. BRANNAN: That's his conclusion, judge. You  
23 can either accept it or reject it.

24 The State isn't vouching for anybody.

25 The witness is permitted to state his

1 conclusion.

2 MR. MARTIN: It's the State's witness.

3 THE COURT: Overruled. I will allow it.

4 THE WITNESS: OK. I observed shoe impressions  
5 and tire impressions due south of the McCarraghe  
6 residence.

7 At the scene itself of the shooting there  
8 was, to the best of my recollection, shell casings  
9 that were expended after the weapon was fired. I  
10 observed the screen that was cut. The angle and  
11 trajectory of the weapon being fired through the window  
12 was consistent with the casings that were found on the  
13 ground outside and inside the residence.

14 The photographs that I -- The  
15 photographs of Mr. McCarraghe that I viewed were  
16 consistent with Mr. Inmon's statement as to where they  
17 were standing and where they shot Mr. McCarraghe on his  
18 body.

19 MR. BRANNAN: OK.

20 Q. BY MR. BRANNAN: Now, moving forward to  
21 the statements Mr. Inmon made about a Daniel Achten,  
22 what did Mr. Inmon tell you happened concerning Mr.  
23 Achten?

24 A. He told me that he had had a verbal  
25 altercation, that there was a problem over a dog that

1 had been killed that belonged to Mr. Inmon. Mr. Inmon  
2 felt that Mr. Achten was responsible for that, and he  
3 went to -- Mr. Inmon went to Mr. Achten's residence,  
4 Mr. Inmon confronted him on that. And he told me that  
5 he shot Mr. Achten in the left side of his head three  
6 times and killed him.

7 Q. And what did he do with Mr. Achten's body  
8 after he killed Mr. Achten?

9 A. Mr. Inmon told me he left Mr. Achten in  
10 the structure that he was murdered in for a couple of  
11 days and then contacted a friend, Mr. Joe Roberts, and  
12 his wife to assist him in disposing of Mr. Achten's  
13 body.

14 Q. And what did he discuss with Mr. Roberts  
15 about disposing of Mr. Achten's body before they  
16 disposed of the body?

17 A. He said he needed some help, Mr. Inmon  
18 needed some help. That's why he got ahold of Mr.  
19 Roberts. That he was too heavy to move by himself.  
20 That they got together, and they decided to tie some  
21 type of a rope or strap -- I'm not sure exactly what it  
22 was -- on to the legs of Mr. Achten, and the other end  
23 of the rope or strap was attached to a Corvette, and  
24 they dragged him out of the residence.

25 Q. And where did they take him after they

1 dragged him out of the residence?

2 A. Behind the residence.

3 Mr. Inmon and Mr. -- Mr. Inmon said  
4 that Mr. Roberts assisted him in digging a hole to put  
5 Mr. Achten in.

6 Q. And what did they do with Mr. Achten's  
7 body after they dug the hole?

8 A. They put some wood inside the hole, and  
9 they placed Mr. Achten's body in there, and they burned  
10 his body.

11 Q. And did he explain in any detail how they  
12 burned the body?

13 A. They used dry wood and put the body on  
14 top of the wood and lit it on fire and remained there  
15 for several hours while the body was being burnt before  
16 they buried it.

17 Q. OK. Did he tell you anything about what  
18 occurred with Mr. Achten's property after they buried  
19 and burned Mr. Achten's body?

20 A. Throughout the interview he had mentioned  
21 taking some parts off of various vehicles and selling  
22 them. He advised me that -- He told me that the  
23 Corvette, a white Corvette, an older Corvette, ended up  
24 in the possession of Mr. Roberts.

25 Q. All right. I want to go back to Mr.

1 McCarraghe for just a few moments.

2 Were you aware of Mr. McCarraghe's  
3 reputation in the community, as far as wealth goes?

4 A. "As far as" what?

5 Q. "Wealth". Whether he had money, or he  
6 was believed to have money.

7 A. It was common knowledge that he carried a  
8 lot of cash around with him, on his person.

9 Q. And did Mr. Inmon say anything about  
10 property belonging to Mr. McCarraghe, the disposition  
11 of property that was in his residence after he was  
12 killed?

13 A. Yes, he did.

14 Q. What did he tell you about that?

15 A. He mentioned -- In the interview he  
16 told me that two nine-millimeter semiautomatic rifles  
17 were taken from the residence of Mr. McCarraghe by  
18 himself and that a wallet containing some personal  
19 items and cash was taken by Mr. Roberts from the  
20 residence.

21 MR. BRANNAN: OK. I have no further questions  
22 from this witness at this time, judge.

23 THE COURT: Thank you.

24 Mr. Martin?

25 MR. MARTIN: Thank you, judge.

## CROSS-EXAMINATION

BY MR. MARTIN:

Q. Are you a certified law enforcement officer?

A. No, I'm not.

Q. Have you ever been?

A. Yes.

Q. When?

A. 1986 to 2007.

Q. In April of 2007 were you a certified law enforcement officer?

A. Yes.

Q. When in 2007 did you cease being a certified law enforcement officer?

A. October 1st. Approximately October 1st.

Q. The conversations that you have been relating to the court regarding Mr. Inmon as a result of your interview, interrogation, whatever they may have been, were any of those after October 1st, 2007?

A. Yes.

Q. Why did you cease being a certified law enforcement officer?

A. I retired.

Q. Was it a voluntary retirement?

A. Yes.

1 Q. Have you ever been charged with a crime?

2 A. Yes.

3 Q. Have you ever been convicted of a crime?

4 A. Yes.

5 Q. What were you charged with?

6 A. Multiple -- I had multiple counts filed  
7 against me in two separate indictments, and I have a  
8 misdemeanor conviction on my record.

9 Q. What were you charged with?

10 MR. BRANNAN: Objection, your honor. Relevance.

11 MR. MARTIN: Credibility.

12 MR. BRANNAN: Credibility is covered under Rule  
13 609. And the witness has testified that he was not  
14 convicted of any felony offense.

15 Rule 609 lists impeachment to felony  
16 offenses and moral turpitude misdemeanors.

17 MR. MARTIN: It also goes to foundation, in  
18 terms of his ability to be making forensically based  
19 opinions and presenting them to this court, such as the  
20 trajectory of bullets, such as positioning of the body,  
21 such as footprints, such as tireprints.

22 MR. BRANNAN: He is not testifying as an expert,  
23 your honor. He is just testifying to what he saw.

24 MR. MARTIN: Your honor, it is not the ken of a  
25 normal, ordinary layperson. It is indeed expert



1 testimony that the State is depending on.

2 MR. BRANNAN: It is referring to testimony --  
3 the expert testimony that he saw, which would be  
4 testified to at trial by experts.

5 MR. MARTIN: That's not how it came out. It was  
6 what he saw. He came around on it. He was testifying  
7 to what he saw and what he concluded.

8 MR. BRANNAN: And he saw --

9 MR. MARTIN: He didn't say an expert told him  
10 this.

11 MR. BRANNAN: Judge, as he has testified, he saw  
12 reports from forensic examiners working for the Federal  
13 Bureau of Investigation. He did testify to that.

14 MR. MARTIN: That was the lab reports.

15 THE COURT: I am going to allow it.

16 MR. MARTIN: Do you remember the question?

17 THE WITNESS: Can you restate it, please?

18 MR. MARTIN: Can the court reporter read it  
19 back, judge?

20 THE COURT: Yes. Please.

21 (Whereupon, the question was read, as follows:

22 "What were you charged with?")

23 THE COURT: Was that the last question?

24 MR. MARTIN: I believe that was the question.

25 THE COURT: OK.

1 MR. MARTIN: Would you like me to restate it  
2 again?

3 THE WITNESS: What was I charged with? Is that  
4 the question?

5 MR. MARTIN: That was the question. Yes, sir.

6 A. There was two indictments filed on me  
7 somewhere between 2003 and 2006 or '7. I don't  
8 remember all the counts.

9 I pled to an undesignated 6, which was  
10 designated a misdemeanor.

11 I don't remember the charges. They were  
12 on the internet, on the Maricopa County web site.

13 If the court would like to recess and  
14 retrieve them, I'm sure we could do that.

15 Q. BY MR. MARTIN: So your testimony here  
16 today is that you remember none of the charges that you  
17 were actually charged with.

18 A. I don't remember the charges I was  
19 charged with.

20 Q. What did you plead guilty to?

21 A. Solicitation and misuse of funds.

22 I borrowed a county trailer without  
23 permission.

24 Q. You borrowed what?

25 A. A county flatbed trailer for my personal

1 use without permission. So I used something that was  
2 not mine.

3 Q. Are you currently on probation?

4 A. No, I'm not.

5 Q. Have you ever portrayed yourself or  
6 introduced yourself as a court investigator?

7 A. A "court investigator"?

8 Q. You repeated that part of the question  
9 correctly. Yes, sir.

10 A. I could have.

11 Q. Have you ever been employed by the Apache  
12 County Superior Court?

13 A. No. I don't believe I have.

14 Q. Have you ever been employed by any court?

15 A. No.

16 Q. Did you ever meet with my client, sitting  
17 here to my right, in person?

18 A. Yes, I have.

19 Q. When was the last time that occurred?

20 A. Yesterday.

21 Q. Yesterday.

22 A. (Witness nods head.)

23 Q. Where?

24 A. The Apache County Jail.

25 Q. Did you speak to him at the Apache County

1 Jail on February 4th, 2010?

2 A. Yes.

3 Q. What time did you speak to him?

4 A. I believe it was midday.

5 Q. Why did you speak to him?

6 A. I visited with him about today's hearing.

7 Q. Did anybody tell you to go there?

8 A. No.

9 Q. You did it of your own accord.

10 A. Yes.

11 I asked if I could go there.

12 Q. Pardon me?

13 A. "I asked if I could go there."

14 Q. Who did you ask?

15 A. The County Attorney, Michael Whiting, and  
16 the Chief Deputy, Martin Brannan.

17 Q. You asked both of them.

18 A. Yes.

19 Q. What day did you ask them?

20 A. Yesterday, the day I talked to Mr.  
21 Roberts.

22 Q. Martin Brannan, the gentlemen seated two  
23 over to my right, is the one that you asked?

24 A. Yes.

25 Q. And Michael Whiting, the County Attorney

1 for Apache County, is the other one that you asked?

2 A. Yes.

3 Q. Were they together at the time you asked  
4 them, or did you ask separately?

5 A. I know that at one point we discussed it  
6 they were both in the room.

7 Q. Did Mr. Brannan consent?

8 A. He advised me that I needed to Mirandize  
9 Mr. Roberts if I was going to talk to him.

10 Q. Did he say anything else regarding your  
11 intent to go speak to my client?

12 A. We had discussed the plea agreement, and  
13 the offer that Mr. Brannan explained in the courtroom  
14 at the start of today.

15 MR. BRANNAN: Your honor, at this point I am  
16 going to object. Under Rule 5.3a, "The preliminary  
17 hearing shall be held before a magistrate who shall  
18 admit only such evidence as is material to the question  
19 of whether probable cause exists to hold the defendant  
20 for trial."

21 MR. MARTIN: I think this is relevant to  
22 probable cause, judge. If I could be allowed to go a  
23 bit further.

24 MR. BRANNAN: Judge, this has absolutely nothing  
25 to do with whether that man killed William McCarraghe,

1       whether that man assisted William Inmon in mutilating  
2       the body of Daniel Achten, and whether he lied to the  
3       police about his knowledge of those crimes.

4               MR. MARTIN: It does indeed, judge, in the sense  
5       that my client is entitled to a right of probable cause  
6       at this hearing.

7               The prosecution has absolutely mangled  
8       that right and tainted it so bad that it has been  
9       compromised.

10              The County Attorney, we have heard  
11       evidence, as well as the actual Chief Deputy, who is  
12       now prosecuting my client, told this witness, in  
13       derogation of my client's constitutional right, State  
14       and Federal constitutional right, to effective  
15       assistance of counsel, to go talk to him without  
16       counsel being present.

17              A few more questions will clearly  
18       establish I was not there.

19              MR. BRANNAN: Judge, the United States Supreme  
20       Court has ruled that as long as the defendant is  
21       Mirandized, we do not have to consult with defense  
22       counsel before the police talk to him.

23              MR. MARTIN: Under the Arizona State Bar  
24       Regulations, anybody can speak to somebody who --  
25       Another attorney who authorizes or causes another, or

1 actually does speak to one who is represented by  
2 counsel, has committed a very egregious Bar violation  
3 of the Code of Ethical Responsibility, and that  
4 constitutes prosecutorial misconduct.

5 We intend to try to establish what else  
6 was said at this hearing at this meeting between this  
7 witness and my client and attempt to demonstrate that  
8 the prosecution has yet again engaged in prosecutorial  
9 misconduct, and would intend to seek dismissal.

10 MR. BRANNAN: And they can do that in the  
11 Superior Court, judge. That has nothing do with  
12 probable cause.

13 MR. MARTIN: It does, judge. It has hampered  
14 our ability to present evidence and engage in a  
15 reasonable probable cause determination because of the  
16 intimidation that this witness perpetrated on my client  
17 out of my presence in a calculated fashion.

18 THE COURT: I am going to allow it, Mr. Martin.  
19 Go ahead, please.

20 MR. MARTIN: Could we have the last question  
21 read back, please?

22 (Whereupon, the record was read as follows:

23 "Did he" -- meaning Mr. Brannan -- "say anything  
24 else regarding your intent to go speak with my  
25 client?")

1 MR. MARTIN: Will you answer it?

2 A. We discussed that I was going to go over  
3 and talk to Mr. Roberts about the plea agreement and  
4 the preliminary hearing. And that's it.

5 Q. BY MR. MARTIN: Was there any mention of  
6 Mr. Roberts' attorney?

7 A. The only thing I can remember that  
8 somebody had said about his attorney is that you  
9 thought he should waive the preliminary hearing.

10 Q. "Somebody". Who was the universal or  
11 possible "somebody" that said that?

12 A. It would have been one of the people in  
13 our office.

14 Q. Who?

15 A. (Indicating.)

16 Q. Maybe you didn't understand my question.  
17 My question was: At the time you were  
18 speaking with Mr. Brannan and/or Mr. Whiting, did  
19 either one of them mention Mr. Roberts' attorney?

20 A. I don't remember. Investigator Jaramillo  
21 was there, Mr. Brannan and Mr. Whiting, and there might  
22 have been another attorney or two. I don't remember  
23 who said that. But it was told by one of the people  
24 that -- it was mentioned that you thought he should  
25 waive his preliminary hearing.



1 Q. That I thought he should waive his  
2 preliminary hearing.

3 A. Yes.

4 So I thought I would go over and talk to  
5 him and let him understand what the deal was as far as  
6 the plea agreement, and make sure he understood.

7 Q. And you did that with the consent and  
8 authorization of the County Attorney and his Chief  
9 Deputy.

10 A. I asked them if I could go speak to Mr.  
11 Roberts. Yes, I did.

12 Q. Now, when you went to speak to Mr.  
13 Roberts, was there a lawyer present?

14 A. No, there was not.

15 Q. Did you know that he had a lawyer?

16 A. Yes, I did.

17 Q. Any doubt that Mr. Brannan and Mr.  
18 Whiting knew he had a lawyer?

19 A. No. I had no doubt.

20 Q. Did you attempt to contact the  
21 defendant's lawyer before you went there?

22 A. I did not.

23 Q. Do you know how to contact the  
24 defendant's lawyer?

25 A. I do not.

1 Q. Do you know how to use a phone book?

2 A. I do.

3 Q. Do you know me?

4 A. No I don't, sir.

5 Q. When you spoke with my client then, you  
6 spoke to him in an interview room. Is that correct?

7 A. Attorney/client room at the Apache County  
8 Jail facility.

9 Q. You and Jaramillo were present. Correct?

10 A. Along with your client. Yes, sir.

11 Q. You asked him to be brought out of his  
12 cell to you?

13 A. To the interview room. Yes.

14 Q. Who did you make that request to?

15 A. The commander of the jail, Commander  
16 Avila, Matrice Avila.

17 Q. Is it true that you told my client that  
18 if he didn't waive his preliminary hearing, that you  
19 would seek the death penalty against him?

20 A. I told him it was a possibility, two or  
21 three times throughout our meeting, at least a couple  
22 of times, that the plea agreement would be basically  
23 off the table, and that they could seek natural life or  
24 the death penalty.

25 The same thing that Mr. Brannan mentioned

1 at the beginning of the hearing.

2 Q. Did you tell my client that if he didn't  
3 waive his preliminary hearing you intended to prosecute  
4 his wife for hindering prosecution?

5 A. We discussed the situation with his wife,  
6 which -- You know. I referred back to when I --  
7 She was pregnant at the initial interview. And I had  
8 asked the prosecutors not to have her arrested at that  
9 point because she was having a baby. But we could warn  
10 for Miranda because we have probable cause to arrest  
11 her.

12 So I did discuss it in some fashion about  
13 one of our other cases, Melissa Johnson, who had  
14 hindered the prosecution of a homicide, that it was  
15 possible that his wife would be charged.

16 Q. If he didn't waive the prelim.

17 A. I just told him that we were going to  
18 move along with it.

19 I think it was tape-recorded. We could  
20 probably bring it in and let the judge hear it, if  
21 she'd like. I'd have to get ahold of Investigator  
22 Jaramillo, and we could take a break and get a quick  
23 down-load.

24 But it was recorded, your honor. To my  
25 knowledge, Mr. Jaramillo recorded the interview.

1 Q. Did you indicate to my client you would  
2 seek the death penalty against her, against his wife?

3 A. No. Absolutely not.

4 Q. Did you use my name during that  
5 interview?

6 A. It's possible.

7 Q. Did you ask about what myself and my  
8 client spoke about?

9 A. I asked him if he could get ahold of you,  
10 if they were allowing him to use the phone. Something  
11 to that effect.

12 And he said: "Yes."

13 And then I followed up at the end by  
14 asking Mr. Roberts if he wanted to call you, with --  
15 you know, making arrangements for him to contact you.

16 And he said: "Yes."

17 And I said: "Well, do it."

18 Q. Did you ask him whether or not I had  
19 presented him with an offer?

20 A. I don't remember if I asked specifically.

21 Q. Did you tell Mr. Jaramillo that he  
22 shouldn't listen to me?

23 A. Mr. Jaramillo? I don't think he knows  
24 you.

25 Q. Excuse me. Did you tell my client, Mr.

1 Roberts, that he shouldn't listen to me?

2 A. I don't think I was that bold.

3 I felt sorry for him, that he wasn't  
4 given all the information on the deal we offered with  
5 the evidence we had.

6 I don't remember. Like I say, I just  
7 don't remember exactly what I said on that.

8 Q. Did you ask my client what witnesses we  
9 intended to call?

10 A. That you intended to call?

11 Q. Yes, sir.

12 A. No.

13 Q. Did you ask my client what our defenses  
14 would be?

15 A. I don't believe -- I don't remember  
16 asking him that.

17 Q. How did you know that -- Well, let me  
18 strike that.

19 Did you know that he was not intending to  
20 waive the preliminary hearing when you went to the jail  
21 yesterday?

22 A. I was told that he was reluctant to  
23 waive.

24 Q. Who told you that?

25 A. One of the attorneys, like I said

1 earlier.

2 Q. "One of the attorneys" being Whiting or  
3 Brannan?

4 A. It could have been another attorney in  
5 the office.

6 It was somebody that came into my office,  
7 and the group of us were talking.

8 It was the same context as before, that  
9 you wanted to waive and he didn't, is what it sounded  
10 like to me.

11 Q. You referred to a tape recording by  
12 Jaramillo.

13 Did you speak to my client off of the  
14 tape?

15 A. At the very end of the tape, maybe as we  
16 were leaving. It had nothing to do with his charges.

17 Let me think just for a minute, your  
18 honor, if I could.

19 THE COURT: OK.

20 THE WITNESS: We talked at the very end.

21 Something to do with the loss of his  
22 child. He said his wife -- that they didn't have the  
23 child.

24 And I gave my condolences to him.

25 And that was it.

1 Q. BY MR. MARTIN: Did you say anything to  
2 my client about if he were to testify at this hearing,  
3 it would go much worse on him?

4 A. If he were to testify?

5 Q. At today's hearing. Yes, sir.

6 A. I don't remember saying that.

7 Q. Did you tell him that if he didn't waive  
8 his preliminary hearing he would get more time than  
9 William Inmon got?

10 A. I told him it was very possible he could.

11 Q. Mr. Inmon has admitted to three first-  
12 degree murders. Is that correct?

13 A. Yes, sir.

14 Q. Does that have a deal, how much time he  
15 is going to get?

16 A. The sentencing is up to the court, if I  
17 remember right.

18 Q. When you told my client it was very  
19 possible that he would get more time if he didn't waive  
20 his preliminary hearing than Mr. Inmon gets, what  
21 number did you have in mind in terms of what Inmon is  
22 going to get?

23 A. Well, just by -- you know -- thinking  
24 about it, he should get twenty-five. For all three, he  
25 should get seventy-five. He should get natural life.

1       You know. Not get -- They're not seeking the death  
2       penalty. So it could go from twenty-five to natural  
3       life, is my assumption.

4               Q.       Mr. Inmon has a deal with the State of  
5       Arizona. Correct?

6               A.       He signed a plea agreement with our  
7       office.

8               Q.       Did he also sign a testimonial agreement?

9               A.       He signed a proffer agreement to  
10      cooperate with us. I can't remember all the details.

11              Q.       Has he waived time for sentencing until  
12      my client goes to trial?

13              A.       I don't have any knowledge of that.

14              Q.       All these things that you have testified  
15      you told my client, were you told by the prosecutors to  
16      say these things to my client?

17              A.       Like I said -- Is it "Mr. Martin"?

18              Q.       Yes.

19              A.       We had a discussion about going to court.  
20      You didn't want to go to prelim, but your client did.

21                      And I thought: Well, maybe he's not  
22      being told everything. I'm going to go over and read  
23      him his rights and tell him what's going on so he  
24      understands that if he does not waive the prelim and  
25      accept the deal, that he may face a lot -- the



1 consequence could be a lot stiffer than what he would  
2 get if he signed the plea agreement. That was my  
3 intent to go over there.

4 And I asked permission. I was granted  
5 it.

6 I Mirandized him. He said very little.

7 I asked him if he could use the phone to  
8 get ahold of you to discuss the case if he changed his  
9 mind, what he wanted to do. Which he hadn't told me if  
10 he was going to prelim or not.

11 And I left. It was quite short.

12 Q. Isn't it true you intended to intimidate  
13 my client?

14 A. Absolutely not. I intended to help him.  
15 That's what I wanted.

16 Q. Isn't it true you attempted to extract a  
17 confession from him?

18 A. Absolutely not.

19 I've never interrogated or interviewed  
20 him involving any crime he was alleged or did commit.

21 Q. Did you tell him that you were present in  
22 the interview recording room at the time he was being  
23 interrogated by law enforcement?

24 A. Yes, I did.

25 MR. MARTIN: Your honor, at this point I would

1 move to continue the preliminary hearing so I can file  
2 a notion to dismiss for prosecutorial misconduct, and  
3 would ask for leave to do so.

4 MR. BRANNAN: Your honor, I believe this court's  
5 jurisdiction is limited to determine whether or not  
6 there is probable cause.

7 THE COURT: That is my jurisdiction. And that  
8 is the purpose of the preliminary hearing. And it  
9 doesn't carry the same burden as a trial would carry.

10 The motion can be made, and we could  
11 cover it, but I don't believe that the Justice Court  
12 level does have the jurisdictional right to determine  
13 those matters.

14 However, I will certainly look into it.  
15 And if you would like to file those, I can make a  
16 determination if I have the jurisdiction to determine  
17 those motions that you intend to file or not.

18 MR. MARTIN: I do intend to file them, judge.

19 In terms of whether or not this court  
20 would have jurisdiction to rule upon that or not, I  
21 have no idea. I just don't know.

22 THE COURT: And I don't believe that that is  
23 the -- I don't believe that I do have jurisdiction,  
24 as a limited jurisdiction judge, to make those  
25 determinations, Mr. Martin. This is basically to

1 determine whether or not probable cause exists. It  
2 does not, as you well know, carry the same burden as a  
3 trial would carry in which it would be up to the State  
4 to prove its case beyond a reasonable doubt.

5 So that, with the matter that is before  
6 us now, the preliminary hearing, it would be probable  
7 cause to determine if the violations occurred and  
8 probable cause to determine that your client was  
9 involved.

10 MR. MARTIN: I agree to all of that, judge.  
11 Those are rock bottom foundation rules and terms of  
12 rules of a probable cause determination.

13 The only thing that gives me pause, your  
14 honor, is the part of the rule that allows, under Rule  
15 5.3a, for the defendant to make a specific offer of  
16 proof of the names of witnesses who would testify and  
17 the police evidence offered.

18 By virtue of what has happened, which we  
19 maintain was a complete trampling of my client's  
20 constitutional rights yesterday, his ability and/or  
21 willingness to do so at this hearing have been  
22 impaired. And to the extent that part of the rule that  
23 this court has the authority over has been impaired --  
24 And again, I am sort of stepping off into something I  
25 don't know with any degree of certainty. But since

1       that is part of the court's authority, my client's  
2       ability to exercise that due to what occurred to him  
3       yesterday during this event with the State's  
4       representative, it has impaired his ability, or at  
5       least his willingness, to want to make that kind of  
6       potential offer. And if that's the case, then why  
7       would this court not have the authority then to pass  
8       upon the question of whether or not prosecutorial  
9       misconduct has impaired my client's rights such that he  
10      could otherwise exercise within this court.

11                       That is probably the extent of the record  
12      I wish to make on it, judge.

13                   THE COURT: Mr. Brannan?

14                   MR. BRANNAN: The only thing I can think of,  
15      judge, is that you have to certify the question to the  
16      Superior Court.

17                   THE COURT: I don't know the answer to the  
18      question, but I do not feel that I have the juris-  
19      diction to make a ruling on that. But I am not for  
20      certain either. So I am going to grant your motion to  
21      continue this preliminary hearing. We will reschedule  
22      it to reconvene at a later date.

23                   And in the meantime, you can file the  
24      document, and I will make that determination.

25                   This matter is concluded for today.

1 STATE OF ARIZONA )

2 COUNTY OF COCONINO )

REPORTER'S CERTIFICATE

3  
4 I, John A. Dalsin, do hereby certify that  
5 I am a Certified Court Reporter within the State of  
6 Arizona;

7 I further certify that the foregoing  
8 proceedings were taken in stenotypy by me at the time  
9 and place herein set forth and were thereafter reduced  
10 to typewritten form, and that the foregoing constitutes  
11 a true and correct transcript of the notes taken at  
12 that time;

13 I further certify that I am not related  
14 to nor employed by or for any of the parties or  
15 attorneys herein nor in any way interested in the  
16 outcome of the within action;

17 In witness whereof I have hereto affixed  
18 my signature this 19th day of February, 2010.

19  
20  
21   
22 JOHN A. DALVIN  
23 Arizona Certified  
24 Court Reporter No. 50270  
25



A				
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